

### **REMARKS**

Claims 1-20 are pending in this Application. Applicants note that the PTO-1449 form returned with the July 3, 2003 Office Action does not indicate that the Examiner has considered these references. Independent consideration and acknowledgement of the references respectfully is requested.

### **Objections to the Specification**

#### **Priority**

The Examiner has indicated that Applicants have not complied with one or more conditions for receiving the benefit of an earlier filing date.

Applicants are simultaneously filing the following documents to correct the benefit claim:

1. A petition and fee under 37 CFR 1.78 and 1.17(t) for acceptance of Applicants' foreign priority claim.
2. A Request for a corrected filing receipt.

Applicants also include with this response a Copy of a Decision to Grant Applicants' Petition to Vacate Notice of Missing Requirements under 35 U.S.C. 371, along with a copy of the PCT request (Form PCT/RP/101), indicating that a declaration of inventorship under PCT Rule 4.17(iv) was filed on the International filing date as part of the PCT request.

#### **Oath/Declaration**

The Examiner indicates that the oath or declaration is defective. Applicants enclose with this Response a granted Petition, mailed March 13, 2002, vacating the Notice of Missing Requirements (Oath and Declaration).

#### **Specification**

In this Amendment, the specification has been amended to insert a claim that this application is the U.S. national phase of International Application PCT/EP01/05254, filed May 7, 2001, as required under 37 CFR 1.78.

An abstract of the disclosure has been added as required by 37 CFR 1.72(b) on a separate sheet.

**Rejection Under 35 U.S.C. §102**

Response to Rejection of Claims 1-20 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,413,901 of Moman et al.

In response to the Rejection under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,413,901 of Moman, ("Moman"), Applicants respectfully submit that the reference does not teach all the elements of the claims and traverse the Rejection.

Moman discloses a process using polymeric particles as supports for the catalyst preparation. The polymeric particles include thermoplastic polymers. Polymer particles of polyvinyl chloride are preferred, and non-crosslinked polyvinyl chloride particles are most preferred. (column 4, lines 1-5). Moman teaches the synthesis of the solid catalyst component by introducing the polymeric material described above into a vessel and then adding a diluent. (column 4, lines 35-37). The polymeric material is then treated with either a magnesium compound or a mix of a magnesium compound and aluminum compound. (column 4, lines 39-43). The polymeric material is further treated with a transition metal compound to form the solid catalyst component. (column 4, lines 53-56). Nowhere in Moman is described a catalyst prepolymerized in a way at all similar to that of the present invention. In fact, with respect to the PVC particles disclosed in the reference, PVC would not be polymerized by using a transition metal (Ziegler-Natta) catalyst.

In contrast to what Moman discloses, the present invention discloses a pre-polymerized catalyst which is prepared by using polymerization of alpha-olefins in the presence of a non-stereospecific solid catalyst component. (page 16, claim 1), and thus is not produced by the simple deposition of a solid catalyst onto a previously formed polymer support. Instead, the solid catalyst contacts with a gas or liquid monomer which is a C3-C10 alpha-olefin (page 16, line 4) to form a pre-polymerized catalyst.

Reconsideration and withdrawal of the rejection respectfully is requested.

**Rejections Under Judicially Created Doctrine Of Double Patenting**

Response to Rejection of Claims 1, 4, 7, 8, 14, and 15 under Judicially Created Doctrine Of Double Patenting as being Unpatentable over claims 1-3, 7-9, 11-12, and 14-15 of U.S. Patent No. 6,423,660 of Albizzati et al.

The Examiner rejected claims 1, 4, 7, 8, 14 and 15 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 7-9, 11-12 and 14-15 of U.S. Patent No. 6,423,660 of Albizzati et al. ("Albizzati"). The rejection is respectfully traversed.

Albizzati claim a supported catalyst for the polymerization of olefins comprising: (A) a porous organic support functionalized with between 3.3 and 6 meq/g of groups having active hydrogen atoms (column 29, claim 1). Therefore, it doesn't concern, mention or teach the preparation or use of a specific prepolymerized catalyst. In contrast, the present invention claims a pre-polymerized catalyst component for polymerization of ethylene (page 16, claim 1), the preparation of which does not require the use of an organic support. Instead, the final catalyst is simply prepared by the polymerization of olefins in the presence of a catalyst. In other words, the catalysts claimed in the present invention are different both in their preparation process and their constituents. In fact, in the present invention there is no use of a polymeric support containing an active hydrogen functionality. Therefore, Applicants submit that the present invention is not obvious over Albizzati since the catalyst component made in the present invention is entirely different than that prepared in Albizzati, and there is no suggestion or motivation in Albizzati to prepare the present claimed catalyst component. Hence, the claims of the present application are patentably distinct over those of Albizzati.

Reconsideration and withdrawal of the Rejection respectfully are requested.

Response to Rejection of Claims 1, 4, 7, 8, 14-16, and 19 under Judicially Created  
Doctrine Of Double Patenting as being Unpatentable over claims 1-2, 4-5, 7-11,  
13, 18-20 and 23 of U.S. Patent No. 6,399,533 of Sacchetti et al.

The Examiner also rejected claims 1, 4, 7, 8, 14, 15, 16 and 19 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 4-5, 7-11, 13, 18-20 and 23 of U.S. Patent No. 6,399,533 of Sacchetti et al. ("Sacchetti"). The rejection is respectfully traversed.

Sacchetti claim a transition metal catalyst component supported on Mg halide (column 16, claims 1 and 7) characterized by specific physical properties. However, in the claims of Sacchetti, the words "prepolymerized catalyst component" are never mentioned. Nor do the claims describe "non-stereospecific" prepolymerized catalyst component. Therefore, one skilled in the art could not arrive at the present invention, which discloses a particular type of prepolymerized catalysts, starting from Sacchetti, which does not teach these features.

Therefore, Applicants submit that the claims of the present application are patentably distinct over those of the reference. Reconsideration and withdrawal of the Rejection respectfully are requested.

Response to Rejection of Claims 1, 4, 5, 6, 9-12, and 16 under Judicially Created  
Doctrine Of Double Patenting as being Unpatentable over claims 1-2 of U.S.  
Patent No. 6,468,938 of Govoni et al.

The Examiner further rejected claims 1, 4, 5, 6, 9, 10, 11, 12 and 16 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of U.S. Patent No. 6,468,938 of Govoni et al. ("Govoni").

The rejection is respectfully traversed. Govoni claim prepolymerized catalyst components, the constituents of which are different from those of the prepolymerized catalyst claimed in the present application. Claim 1 and 2 of Govoni relate to a

"stereospecific catalyst" (to provide a polypropylene having more than 90% insolubility in xylene) containing a specific electron donor, and being prepolymerized with ethylene. In contrast, the prepolymerized catalyst of the present invention is directed to a "non stereospecific catalyst" (i.e., not able to provide a polypropylene having more than 90% insolubility in xylene) which is prepolymerized with olefins having at least three carbon atoms (so that ethylene is excluded). It is apparent that the prepolymerized catalyst claimed in the present application represents a complete departure from what is described in Govoni, and there is no suggestion or teaching in Govoni for such a departure. Therefore, Applicants submit that the claims of the present application are patentably distinct over those of the reference. Reconsideration and withdrawal of the rejection respectfully are requested.

Applicants respectfully request that a timely Notice of Allowance be issued in this case. Should the Examiner have questions or comments regarding this application or this amendment, Applicants' attorney would welcome the opportunity to discuss the case with the Examiner.

Respectfully submitted,



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Enclosures

Basell USA Inc.

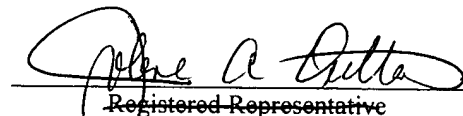
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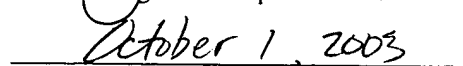
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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22323-1450 on October 1, 2003.



Registered Representative



Date of Signature